

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

TERRY LEROY BRASDA,

Defendant/Movant.

Cause No. CR 14-96-GF-BMM
CV 17-89-GF-BMM

ORDER DENYING MOTION TO
RECONSIDER AND DENYING
CERTIFICATE OF
APPEALABILITY

The Court denied Defendant Brasda's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 on October 18, 2017. Brasda is a federal prisoner proceeding *pro se*. Brasda now asks the Court to explain why the ruling on his motion does not follow the commentary to Amendment 794. *See* Letter (Doc. 851) at 1-2.

The commentary Brasda quote does not constitute commentary by the United States Sentencing Commission. *see Id.* at 1. The Commission's commentary does not refer to 28 U.S.C. § 2255. Further, Brasda misunderstood the decisions cited in his § 2255 motion. None of them arose under or refer to 28 U.S.C. § 2255. *See United States v. Quintero-Leyva*, 823 F.3d 519, 520 & n.1 (9th Cir. 2016); *United States v. Brooks*, 732 F.3d 148, 149 (2d Cir. 2013) (per curiam); *United States v. Sabbeth*, 277 F.3d 94, 95, 99 (2d Cir. 2002); *United States v.*

Sanchez, 81 F.3d 9, 10 (1st Cir. 1996), *cited* in Mot. § 2255 (Doc. 844) at 3-4.

Brasda asserted that “the retroactivity of clarifying amendments to *collateral* proceedings” is “firmly entrenched in many federal circuit courts of appeal.” Mot. § 2255 (Doc. 844) at 3 (emphasis added). These cases hold only that clarifying amendments are generally retroactive to cases on *direct* review.

Construing Brasda’s request for an explanation as a motion to reconsider, it is denied. A certificate of appealability is also denied. Brasda has not shown he was deprived of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, **IT IS HEREBY ORDERED:**

1. Brasda’s motion to reconsider (Doc. 849) is **DENIED**.
2. A certificate of appealability is **DENIED**. The Clerk of Court shall immediately process the appeal if Brasda files a Notice of Appeal.
3. With Brasda’s service copy of this Order, the clerk will include the Commission commentary following Amendment 794, U.S.S.G. Supp. to App. C (Nov. 1, 2016), at 114-117.

DATED this 21st day of November, 2017.



Brian Morris
United States District Court Judge